

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 534 OF 2007

Bharat S. Dahanukar and anr. ..Petitioners

Vs.

M/s. Hindustan Construction Co.
Ltd. and anr. ..Respondents

Mr. Subhash Jha i/by Law Global for petitioners.
Mr. S.D. Mogre for respondent no.1.
Ms. S.V. Gajare, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 16, 2007.

P.C.:

1. Heard Mr. Jha the learned counsel for the petitioners who are impleaded as accused nos.3 and 5 in Criminal Application No.92/S/1997 (later on registered as 3888/SS/2005).

2. It appears that the accused no.1-Company i.e. Goodvalue Marketing Co. Ltd. had issued two cheques drawn in favour of the complainant-Company i.e. M/s.Hindustan Construction Co. Ltd. The first cheque towards the principal amount of Rs.1 crore was dated

17/9/1996 bearing No.225183 and the other cheque bearing No.225189 dated 16/9/1996 was in respect of the interest amount of Rs.4,93,644/-. Both the cheques were dishonoured when presented by the drawer and, therefore, after giving the statutory notice and waiting for 15 days, the complainant filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 on or about 31/1/1997. The learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai issued the process on 6/2/1997.

3. For the first time, after about 9 years i.e. on 6/1/2006, the order of process came to be challenged before this court in Criminal Application Nos.38 and 39 of 2006 and both these applications came to be rejected by a common order dated 22/12/2006. Para 13 of the said order passed by this court reads as under:-

"13. The Criminal Applications are not entertained and the same are rejected. Rejection of the Criminal Applications will not come in the way of the Applicants

preferring revision Applications before the appropriate Sessions Court. If revision applications are preferred, the concerned court will take into consideration the fact that these Applications were filed in this court on 06th January, 2006 and the same remained pending till today."

4. Consequently, the petitioners approached the Sessions Court at Gr. Bombay by filing Criminal Revision Application (Stamp) No. 905 of 2007 along with an application for condonation of delay which came to be registered as Misc. Application No. 310 of 2007 and the said Misc. Application has been dismissed by the impugned order dated 14/3/2007 by the learned Additional Sessions Judge, Gr. Bombay.

5. Mr. Jha the learned counsel for the petitioners submitted that the impugned order passed by the Sessions Court dismissing the application for condonation of delay is in disregard to the order passed by this Court on 22/12/2006, even if the application for condonation of delay was not set out

in an elaborate manner, it was necessary for the Sessions Court to consider the spirit of the order passed by this court in granting liberty or relegating the petitioners to the alternative and efficacious remedy of a revision application and the hyper-technical approach resorted to by the Sessions Court is unsustainable. He further submitted that the doors of justice could not be shut in these manners and it would be, therefore, appropriate that the petitioners are allowed to file a fresh application for condonation of delay before the Sessions Court and such an application be directed to be heard on merits by quashing and setting aside the impugned order. Mr.Jha also relied upon the judgment in the case of N. Balakrishnan vs. M. Krishnamurthy [(1998) 7 SCC 123].

6. In the complaint filed by the present respondent no.1 it has been clearly stated that accused nos.2 to 7 are the Chairman and Directors of accused no.1-Company and accused no.8 was the Company Secretary of the said company. The order of this court passed on 22/12/2006 cannot be read to be an

order relegating the petitioners to the remedy of revision under Section 397 of Cr.P.C. before the Sessions Court. It was only clarified by this court that the order rejecting the criminal applications filed under Section 482 of Cr.P.C. would not come in the way of the petitioners for preferring the revision applications and in that event the period of pendency of these applications before this court i.e. 6/1/2006 to 22/12/2006 shall be taken into consideration for condonation of delay. It was, therefore, necessary for the petitioners to explain the delay caused from 6/2/1997 i.e. from the date the order of process was issued to 6/1/2006 i.e. the date on which the criminal applications were filed before this court and on this issue there was no explanation furnished by the petitioners as observed in the impugned order. It would be appropriate to reproduce para 10 of the impugned order:-

"10. However, the dispute before the court for condonation of delay is not from 6/1/2006 onwards but dispute is from 6/2/1997 till the

applicant moved before the Hon'ble High Court on 6/1/2006. Entire proceedings before this court, nowhere the applicant has given explanation as to what are the circumstances that made him to come before this court at such a late stage, though the process was issued on 6/2/1997 till the applicant moved before the Hon'ble High Court on 6/1/2006. Such a long delay from 1997 till 2006 remained unexplained. I am told that as on today, the trial before the lower court has already commenced, and the stage has come for recording the statement of the accused u/s. 313 of Cr.P.C. after closing the evidence. Under the circumstances, I hold that in the absence of any ground taken by the applicant for condonation of delay, I am not inclined to grant any relief in the present application..."

7. Even in this petition no explanation is coming forth regarding the delay caused from 6/2/1997 till

6/1/2006 and this court in the order dated 22/12/2006 did not state that the revision application to be filed by the petitioners before the Sessions Court would be considered on its own merits without considering the issue of condonation of delay. The petitioners are the Directors of the accused no.1-Company and whether they were, at the relevant time, in-charge and responsible for the day to day affairs for the said accused company is a matter which could have been agitated as soon as the process was issued. Now that the complaint has reached the stage of recording evidence and admittedly the accused no.8 has cross-examined the complainant and, therefore, it would be appropriate that the said issue regarding the status and involvement of the petitioners as regard to the day to day administration of the accused no.1-company will have to be decided on the basis of the evidence that is being recorded as at present. The view taken by the learned Addl. Sessions Judge, therefore, cannot be termed as perverse or patently erroneous so as to cause interference under the supervisory powers of this court under Article 227 of the Constitution.

8. Hence, the petition is rejected summarily. Trial is expedited and it is directed that the same shall be completed preferably by 31st October, 2007. Interim order of stay stands vacated.

. The oral application made by Mr.Jha to continue the interim order is hereby rejected.

(B.H. Marlapalle, J.)